United Nations A/HRC/25/NGO/132

General Assembly

Distr.: General
4 March 2014

English only

Human Rights Council
Twenty-fifth session
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by International Educational Development, Inc., a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-11635
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Continuing the examination of judicial reform in Somalia

International Educational Development, Inc. and the Association of Humanitarian Lawyers have worked on the situation in Somalia for a number of years.[1] Our most recent report—prepared for the UNHRC's 24th session—called for prioritizing judicial reform.[2] In this follow-up, we explore in greater detail why reform is necessary and how it can be achieved.

Currently, the judicial mechanisms in Somalia are inadequate and highly disjointed. There is undoubtedly a lack of physical infrastructure, which makes it impossible for many victims to seek redress for crimes committed against them. Where there is physical infrastructure, it is often difficult to successfully prosecute because of the influence of local politics. By the same token, the right to due process and a fair trial are often ignored and many innocent people are actually convicted and punished.[3] This system ultimately fosters impunity. For example, the Independent Expert on Somalia reported that over 1,700 rape cases were registered with the UN between January and November 2012.[4] In the same time period, the Somali military courts only opened 13 rape cases against government security forces, while only about 100 rape cases were opened in civilian courts in Mogadishu.[5] Only a few resulted in convictions.[6]

Having recognized the clear need for judicial reform, the more challenging task is actually formulating and carrying out specific recommendations. Currently, the judicial landscape is fragmented: Military courts are prevalent and worryingly adjudicate both military and civilian cases;[7] formal courts operating Sharia and common law exist but do not generally have the resources or training to function consistently and independently;[8] customary courts operating Xeer often function, but generally do not allow women to speak and are clan-specific.[9] Moreover, the provisional constitution (which should be finalized in 2015)[10] calls for a constitutional court, federal courts, and federal member state courts.[11] Reconciling all of this into an independent, consistent, and efficient judicial system is an extremely difficult task, and will require assistance from all relevant stakeholders.

Recommendations for achieving judicial reform

1. In 2013, UNSOM and the Puntland judiciary organized a training workshop for judges focusing on the application of human rights in their work.[12] We recommend that UNSOM, in conjunction with the Ministry of Justice, conduct a similar training workshop in Mogadishu in 2014. We encourage coordination and sharing of training resources with the OHCHR as well.

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[1] Association of Humanitarian Lawyers researcher Diya Malani assisted in the preparation of this document. Please see our prior statements: A/HRC/15/NGO/73, A/NRC/16/NGO/41, A/HRC/17/NGO/15, A/HRC/19/NGO/36, A/HRC/20/NGO/41, A/HRC/21/NGO/56 and A/HRC/22/NGO/61.

[2] International Educational Development, *Judicial Reform in Somalia*, A/HRC/24/NGO/23 (28 August 2013). Available at: http://www.undocs.org/A/HRC/24/NGO/23.

[3] A well-documented example of this occurred in February 2013, when a woman alleging she was raped by government soldiers and the journalist who interviewed her about the situation were convicted of falsely accusing a government body of a crime that damages state security. It has been widely documented that the journalist was originally detained without being charged and was not allowed to produce witnesses at trial. Both defendants were also interrogated without legal counsel. It should be noted that their convictions were eventually overturned. See http://www.bbc.co.uk/news/world-africa-21647203

[4] United Nations Human Rights Council, *Report of the Independent Expert on the situation of human rights in Somalia, Shamsul Bari*, A/HRC/24/40 (16 August 2013), ¶49. Available at: http://www.undocs.org/A/HRC/24/40.

[5] *Ibid.*, ¶54

[6] *Ibid.*

[7] *Ibid.*, ¶19

[8] *Ibid.*

[9] *Ibid.*

[10] *The Somali Compact*, II (PSG 1-Priority 2). Available at: http://www.pbsbdialogue.org/The%20Somali%20Compact.pdf

[11] The Federal Republic of Somalia, *Provisional Constitution* (1 August 2012), Article 108. Available at: http://www.somaliweyn.com/pages/news/Aug_12/Somalia_Constitution_English_FOR_WEB.pdf

[12] See http://unsom.unmissions.org/Default.aspx?tabid=6269&language=en-US.

2. At its 24th Session, the Council passed a resolution calling upon the FGS to, inter alia, seek "tangible and timely" assistance from regional bodies in reforming the Somali judiciary system.[13] We recommend that the FGS engage fully with regional bodies in this regard, and that other relevant mandate holders also participate in this process.

3 The Independent Expert's Report of September 2013 included his suggestion that the "re-establishment of a legitimate justice system must…be a priority for the Government."[14] He recommended that the Federal Government of Somalia (FGS) conduct an assessment and develop a strategy for judicial reform.[15] We urge the Independent Expert to continue to draw attention to this issue and to ensure that civil society has a voice in reform. Members of the FGS, including the President, have noted that judicial reform should and will be a priority for them.[16] However, we reiterate the Independent Expert's call for the FGS to develop a more detailed strategic plan. This plan needs to include at the least:

a. Facilities-- law schools, prisons, police stations, courts, etc.

b. Education and training -- law students, attorneys, judges, police personnel, prison personnel, etc.

c. Addressing the civil codes, penal codes, the role of Sha'aria courts, Xeer,and family law courts, piracy courts, etc.

d. Establishment and documentation of judicial precedents, benchmarks, etc.

e. Amendments and modification procedures, etc.

f. Methods for evaluation and over-sight.

This plan should only be finalized upon a consultation with civil society. Further, we recommend that the FGS request the assistance of the Independent Expert to formulate this detailed plan.

4. We welcome the adoption of the Somali Compact, a strategic plan for 2014-2016 based upon the Busan New Deal principles[17] that prioritizes inclusive politics, security, justice, economic foundations, and revenue and services, with mutual responsibility for donor countries and the FGS.[18] However, the Compact has been criticized for possibly being "the latest in the long list of expensive conferences on Somalia that end with ambitious communiques but have little or no impact on the development of the country."[19] We recommend that the Somalia Development and Reconstruction Facility (the coordinating organization borne out of the Compact) work with the FGS and civil society to develop a more detailed plan no longer focused on broad platitudes. Moreover, the Busan principles for justice naturally do not take into consideration the cultural context of Somalia, specifically the clan-based customary law of Xeer. Donor countries need to have a better understanding of the cultural context, which must also be better incorporated into further strategic plans for judicial reform.

Conclusion

Having a functioning and independent judiciary will not only better protect the right to justice for citizens but will also help Somalis gain more confidence in the FGS. Having a strong judiciary will help combat crime and lead to quicker resolutions of civil issues, including land and contract disputes. It will also create more transparency in the government

[13] Human Rights Council resolution 24/30, *Assistance to Somalia in the field of human rights*, A/HRC/RES/24/30 (27 September 2013), ¶10(i). Available at: http://www.undocs.org/A/HRC/RES/24/30.
[14] *Ibid.*, ¶18
[15] *Ibid.*
[16] See http://www.aljazeera.com/indepth/features/2013/03/20133610123948211.html
[17] See http://www.newdeal4peace.org/about-the-new-deal/
[18] Supra n. 10, I.
[19] Harper, Mary. "Somalia 'New Deal': EU pledge at Brussels conference" *BBC* (16 September 2013). Available at: http://www.bbc.co.uk/news/world-africa-24108025

and help to counter corruption. Moreover, it will lead to job creation within the justice sector. Significantly, if the judicial system in Somalia is effectively reformed, it will provide a solid foundation from which human rights can be both promoted and protected.